

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

NANCY MATHERS

v.

SHERWIN-WILLIAMS  
COMPANY, INC.

NO. 97-5138

Broderick, J.

November 13, 1997

MEMORANDUM

Presently before the Court is the motion of defendant Sherwin-Williams Company, Inc. ("Sherwin-Williams") to transfer this case to the United States District Court for the Middle District of Tennessee, pursuant to 28 U.S.C. § 1404(a). Plaintiff Nancy Mathers contests the motion to transfer. For the reasons set forth below, Defendant's motion to transfer will be denied.

**I. Background**

The facts of this case, as alleged in Plaintiff's complaint, are as follows: Nancy Mathers brings this action under Title VII, 28 U.S.C. § 2000e et seq., and under the Pennsylvania Human Relations Act, 43 P.S. § 951 et seq., alleging that her former employer, Defendant Sherwin-Williams, discriminated against Plaintiff on account of her sex by creating and maintaining a hostile work environment. Plaintiff is a resident of Exton, Pennsylvania, and she was employed by Sherwin-Williams until

February, 24, 1997, when she alleges she was constructively discharged. At that time, Plaintiff held the position of Director of Retail Marketing for the Eastern Division. Her office was located at one of Defendant's principal places of business in Malvern, Pennsylvania.

Plaintiff alleges that on January 20, 1997, while attending Sherwin-Williams's 1997 National Sales Meeting in Nashville, Tennessee, George McCarthy ("McCarthy"), Sherwin-Williams's vice president of executive accounts, made comments regarding her appearance and insinuated falsely that Plaintiff was interested in a sexual relationship with him. These comments were made from a podium just prior to McCarthy's presentation to approximately 75 management representatives, and the comments could be heard by the audience. Plaintiff alleges that McCarthy has made similar comments to Plaintiff at various times over the past six years, at least once within the hearing of Sherwin-Williams's Eastern Division Director of Human Relations.

Plaintiff alleges that subsequent to McCarthy's comments, while still in Tennessee, she was approached by several of her management colleagues who made light of McCarthy's comments and asked insinuating questions about her relationship with McCarthy. Upon her return to Pennsylvania, Plaintiff alleges that she received telephone calls from employees in Sherwin-Williams's corporate headquarters in Ohio who had not been at the Tennessee

conference but who had heard about McCarthy's comments. Although Plaintiff reported McCarthy's comments, as well as the subsequent conditions of her employment, to two Sherwin-Williams Vice Presidents (one in Ohio and one in Pennsylvania), Plaintiff alleges that Sherwin-Williams has never investigated the matter or taken any disciplinary actions.

Plaintiff alleges that because of McCarthy's comments, the response of her colleagues, and Sherwin-Williams's lack of response in investigating or disciplining McCarthy, she was constructively discharged on February 24, 1997 when she presented her notice of involuntary resignation to the Eastern Division Director of Human Resources.

Plaintiff, along with her husband, has also filed a tort action in Tennessee state court against George McCarthy alleging defamation, outrageous conduct, and loss of consortium. Defendant McCarthy removed that action to the United States District Court for the Middle District of Tennessee based on diversity of citizenship.

## **II. Discussion**

Defendant moves the Court to transfer this action to the Middle District of Tennessee pursuant to 42 U.S.C. § 1404(a) which provides: "For the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where

it might have been brought."

In deciding a § 1404(a) motion, the Court must first determine whether the proposed transferee district is one in which the plaintiff could have initially filed the action. Hoffman v. Blaski, 363 U.S. 335, 343-344, 80 S.Ct. 1084, 4L.Ed.2d 1254 (1960). It would appear that this action could have been brought in the Middle District of Tennessee, and neither party raises the issue that it could not have been.

The Court must next "consider all relevant factors to determine whether on balance the litigation would more conveniently proceed and the interests of justice be served by [the] transfer." Jumara v. State Farm Ins. Co., 55 F.3d 873, 379 (3rd. Cir. 1995)(citations omitted). The Third Circuit has noted that in determining whether to transfer a case pursuant to § 1404(a), courts have considered a number of factors, among which are the following: the parties' choices of fora, with greater weight given to the plaintiff's choice; the convenience of the parties as indicated by their relative physical and financial condition; whether the claim arose elsewhere; and the convenience of the witnesses. Jumara, 55 F.3d at 879. In addition, the possibility of consolidation with another case in the transferee district may be considered. Wright and Miller, Federal Practice and Procedure, § 2384 at 435; see Continental Grain Co. v. The FBL 585, 364 U.S. 19, 26, 80 S.Ct. 1470, 1474. The burden of

establishing the need for a transfer rests on the defendant, and "in ruling on defendant's motion, the plaintiff's choice of venue should not be lightly disturbed." Jumara, 55 F.3d at 879.

In the case presently before the Court, the above factors weigh heavily in favor of keeping the case in the Eastern District of Pennsylvania. The Eastern District of Pennsylvania is the forum of Plaintiff's preference, which is entitled to considerable weight. The Plaintiff resides in Pennsylvania, and given the "relative physical and financial condition" of the parties, Plaintiff's convenience weighs more heavily than the convenience of Sherwin-Williams, a large national corporation. Thus, the parties' choice of fora and convenience weighs in favor of keeping the case in the Eastern District of Pennsylvania.

In addition, it is not at all clear that it will be more convenient to potential witnesses in the instant action to have this case transferred to the Middle District of Tennessee. Defendant has not named any witnesses who will be inconvenienced if the instant action remains in the Eastern District of Pennsylvania, nor has the Defendant pointed to the names of any witnesses who might be inconvenienced by being required to testify both in the instant action and the action currently pending in the Middle District of Tennessee. Thus, Defendant has not carried its burden in establishing that the convenience of witnesses necessitates transfer.

Furthermore, although the action in Tennessee is apparently based on comments allegedly made at a conference in Tennessee, the present action will apparently encompass factual allegations arising not just in Tennessee, but also in Pennsylvania and Ohio.

Finally, while it is not this Court's decision whether to consolidate the instant action with the case pending in the Middle District of Tennessee, this Court takes note that the two cases involve different defendants and different claims, which might militate against consolidation.

Defendant has failed to carry its burden of establishing that transferring the instant action to the Middle District of Tennessee will promote the interests of justice or the convenience of the parties and witnesses.

### **III. Conclusion**

After carefully considering the relevant factors, for the reasons heretofore set forth the Defendant's motion to transfer the case currently before this Court will be denied.

An appropriate Order follows.

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ORDER

AND NOW, this 13th day of November, 1997; the Defendant having filed a motion to transfer the instant action to the United States District Court for the Middle District of Tennessee pursuant to 28 U.S.C. 1404(a); Plaintiff having filed a response in opposition to the Defendant's motion;

**IT IS ORDERED:** For the reasons set forth in the accompanying Memorandum of November 13th, 1997, the Defendant's motion to transfer is **DENIED**.

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RAYMOND J. BRODERICK, J.